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The Judiciary
P.O. Box 2560
Honolulu, Hawaii 96804
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SETTLEMENT AGREEMENT BETWEEN THE HAWAII STATE COMMITTEE
OF BLIND VENDORS, THE HAWAII BLIND VENDORS ASSOCIATION,
WALTER ISHIKAWA, CHARLOTTE KAUHANE, ESROM NIHOA, YOSHIKO
NISHIHARA, MIRIAM ONOMURA, CLYDE OTA, ALICE SCHAAR,
WARREN TOYAMA, FILO TU, JEANETTE TU, THE DEPARTMENT
OF HUMAN SERVICES, STATE OF HAWAII, AND THE DEPARTMENT
OF TRANSPORTATION, STATE OF HAWAII

THIS SETTLEMENT AGREEMENT, made this 28 day of July,
1993 ("Agreement"), by and between the Hawaii State Committee of
Blind Vendors ("Committee"), the Hawaii Blind Vendors Association
("Association") Walter Ishikawa, Charlotte Kauhane, Esrom Nihoa,
Yoshiko Nishihara, Miriam Onomura, Clyde Ota, Alice Schaar, Warren
Toyama, Filo Tu, Jeanette Tu ("Individual Blind Vendors"), the
Department of Human Services, State of Hawaii ("DHS") and the
Department of Transportation, State of Hawaii ("DOT"), is the
product of intensive, good faith mediation by all parties to obtain
a mutually acceptable institutionalized accommodation of competing
interests ("the Mediation Process").

In consideration of the terms of this Agreement being
fully effectuated and implemented, the Association and the Indi-

vidual Blind Vendors agree, except as expressly set forth herein, to withdraw with prejudice the Amended Notice of Claim and Request for Informal Administrative Proceeding, Evidentiary Hearing and Arbitration filed with the Department of Human Services, State of Hawaii on August 8, 1990 ("Notice of Claim") as to all parties to this Agreement, and to withdraw without prejudice the Notice of Claim as to all nonparties to this Agreement; and, to dismiss with prejudice the First Amended Complaint filed in the Circuit Court of the First Circuit, State of Hawaii on December 24, 1990 in Hawaii Blind Vendors Association, et al. v. DHS, et al., Haw. 1st Cir. Civ. No. 81236 (original Complaint filed January 23, 1984), remanded for agency adjudication, 71 Haw. 367, 791 P.2d 1261 (1990) ("HBVA litigation") as to all parties to this Agreement, and to dismiss the Amended Complaint without prejudice as to all nonparties to this Agreement; provided, however, that in the event that this Agreement is found or determined to be invalid or unenforceable, in whole or in part, the claims of the parties to this Agreement as set forth in the Notice of Claim and in the Amended Complaint in the HBVA Litigation shall be reinstated to the extent necessary to permit the assertion of such claims.

I. Definitions

1. As used in this Agreement, the following definitions shall apply:

a. "Association" means the Hawaii Blind vendor Association, an organization of blind vendors whose members are participants in the Hawaii Blind Vendor program in the State of

Hawaii and which acts as an advocate for Blind Vendors.

b. "Authority" as relates to vending machines means any authority, arrangement, agreement, license, permit, grant, grace or privilege.

c. "Blind Vendor" means a "blind person" as defined by federal and Hawaii law who is a vocational rehabilitation client of DHS who has successfully completed blind vendor facility training and is certified by DHS, and who has been appointed (licensed) by DHS as a Blind Vendor pursuant to Haw. Rev. Stat. §102-14 and Haw. Admin. R. § 17-402-17. "Blind Vendor" includes, but is not limited to, Walter Ishikawa, Charlotta Kauhane, Esrom Nihoa, Yoshiko Nishihara, Miriam Onomura, Clyde Ota, Alice Schaar, Warren Toyama, Filo Tu, and Jeanette Tu, and also includes any person appointed to a newly-established blind vending facility subsequent to this Agreement who is also covered under the terms of this Agreement.

d. "Building Constructed with Private Funds on Property Owned or Controlled by DOT" as relates to vending machines means a building or structure constructed solely by the use of private funds on Property Owned or controlled by DOT which DOT has leased or otherwise permitted another governmental organization, private person, business, or other entity to use; provided, however, that once there is a New, Renewed or Replaced Lease for such building, the building ceases to be a Building Constructed with Private Funds on Property Owned or Controlled by DOT and thereafter becomes Building or Area Owned or Controlled by DOT notwithstanding that it may have been or will be replaced, recon-

structed, renovated, improved, and/or maintained through the use of private funds, or governmental funds, or both.

e. "Building or Area Open or Closed to the Public" as relates to vending machines means any area, building, or structure on Property Owned or controlled by DOT notwithstanding that all or some portion of it is open or closed to the public or to some other classification of persons such as "employees only."

f. "Building or Area Owned or Controlled by DOT" as relates to vending machines means an area, building or structure owned or controlled by DOT which DOT has leased or otherwise permitted another governmental organization, private person, business, or other entity to use whether or not in conjunction with a ground lease notwithstanding that building or area may have been constructed, improved, and/or maintained through the use of private funds, or governmental funds, or both.

g. "Committee" means the Hawaii State Committee of Blind Vendors, which shall be recognized as a government instrumentality for purposes of the Internal Revenue Code and which operates pursuant to federal law (i.e., 20 USC § 701, et seq.) and the law of the State of Hawaii (i.e., Haw. Admin. R. § 17-402-17(o)) with duly authorized functions and responsibilities, including but not limited to the following:

- (1) Participate actively with the state licensing agency in major administrative decisions and policy and program development affecting the overall administration of the State's vending facilities program.

- (2) Receive grievances for blind vendors, initiate

action thereon, and serve as an advocate for blind vendors.

(3) Serve as an advocate for the program.

(4) Sponsor, with the assistance of the state licensing agency, meetings and instructional conferences for blind vendors.

h. "Cost-of-Living index" means the Consumer Price Index, with the quarter ending June 30, 1993 being the base year.

i. "DHS" means the Department of Human Services, State of Hawaii, an agency of the State of Hawaii that administers the Hawaii blind vendor program under law, and is the sole state agency which administers the vocational rehabilitation program, which provides vocational rehabilitation for the blind and visually impaired persons, and is the agency that has been designated by the United States Secretary of Education as the State Licensing Agency for blind and visually impaired persons pursuant to Haw. Rev. stat. Chapter 347.

j. "DOT" means the Department of Transportation, State of Hawaii, an agency of the State of Hawaii that administers and is responsible for all operations, maintenance, construction, and related matters involving all airports and related properties in the State of Hawaii pursuant to Haw. Rev. Stat. § 261-4, et seq.

k. "Drawing" means an accurate representation of the vending facility (e.g., showing the location of the facility within the airport property, the building enclosing the facility, the physical space occupied by the vendor, the dimensions and square footage so occupied, and other characteristics of the facility).

l. "Existing operator at (of) the HIA facility (ies)" means the nonprofit organization Maka'ala, Inc.

m. "Facility" and "Facilities" as used in this Agreement, have the identical and same meaning as the term "vending facility" as set forth in Haw. Rev. Stat. § 102-14 and include both the singular and plural as appropriate.

n. "Gross Annual Income from the Facility" includes all sales proceeds received or billed from the sale of items at the Facilities, including the total amount of all monies paid into vending machines pursuant to paragraph 1.0. hereof, but excludes all sales or gross excise taxes; receipts from the sale of waste; receipts in the form of refunds from or the value of merchandise or supplies returned from shippers, suppliers, or manufactures; the amount of any cash or quantity discounts received from sellers, suppliers, or manufacturers; the amounts of any gratuities paid or given by patrons or customers; and any discounts given to airport employees and other persons.

o. "Gross Annual Vending Machine Income", for the first twelve months of this Agreement, shall mean the gross amount of commissions paid by a third party to the HIA Blind Vendors based upon the stocking, maintenance and service of the vending machines by such third party, or the gross amount of income generated by the vending machines if such machines are stocked, maintained and serviced directly by the HIA Blind Vendors. Thereafter, the term "gross annual vending machine income" shall mean the total amount of monies collected from the machine coin or cash box.

p. "HBVA Litigation" means the Complaint filed in

Circuit Court of the First Circuit, State of Hawaii, on December 24, 1990 in Hawaii Blind Vendors Association et al., vs. Department of Human Services, et al., Haw. 1st Cir. Civ. No. 81236, remanded for agency adjudication, 71 Haw. 367, 791 P.2d 1261 (1990).

q. "Health Aids" means a limited assortment of non-prescription medicines including, but not limited to, the following:

(1) Aspirin and non-aspirin analgesics, and cold remedies;

(2) Breath mints, cough drops, and sore throat lozenges;

(3) A range of lip balms at varying levels of sunscreen protection;

(4) Other miscellaneous non-prescription medicines including, but not limited to, motion sickness medicine, eye drops (including eye drops for contact lenses,) laxatives, and antacids; and

(5) Adhesive bandages.

r. "HIA Blind Vendors" means the Blind Vendors who receive permits from DHS pursuant to Haw. Rev. Stat. § 102-14 and the administrative rules promulgated thereunder to operate the vending facilities at Honolulu International Airport under the terms and conditions of this Agreement and the Operating Agreement.

s. "Honolulu International Airport" or "HIA" means the international airport located on the Island of Oahu as described in Haw. Rev. Stat. § 261-23.

t. "Incentive Compensation" means the Forty

percent (40%) of net income which may be retained by the Corporation or paid to the HIA Blind Vendors, consisting of the amount remaining after expenses but before tax, and after the payment of Threshold Compensation to shareholders of the Corporation.

u. "Inter-Island Terminal" or "IIT" means the Inter-Island Terminal currently under construction at HIA which is scheduled to be open for the public in the Summer of 1993.

v. "List of Vending Machines" means a catalogue of vending machines which shall contain a description of the vending machine, the location (i.e., the portion of HIA, the building, and location within the building [e.g., Domestic Cargo Area; United Airlines, Building 325, on South Wall Adjacent to Entrance to Room 215]), the type of vending machine (i.e., soda, candy, snack), its physical footprint (i.e., dimensions or total square feet), its power usage, power rating and/or other utility consumption (e.g., estimated KW hours per month), its classification (e.g., make, model, serial number, etc.), the owner of the vending machine itself (e.g., Honolulu Isle Machines), and any other appropriate details concerning the machine (e.g., rough-in to water and drain required).

w. "New, Renewed or Replaced Lease" as relates to vending machines means a written lease which is made, entered into, approved, executed, signed, renewed, extended, lengthened, continued, replaced, superseded, waived, or otherwise made effective, continued in effect, or dispensed with by affirmative act or acquiescence of DOT for any period of time from and after April 1, 1992.

x. "NIA Litigation" means the Complaint filed in the Circuit Court of the First Circuit, State of Hawaii, in the case of Hawaii State Committee of Blind Vendors, et al. vs. Department of Human Services, State of Hawaii, et al., Haw. 1st Cir. Civ. No. 90-3744-11.

y. "Non-Profit Corporation" or "NPC" means the Non-Profit Corporation exempt from taxation under the Internal Revenue Code § 501(c)(3) which the Blind Vendors shall form pursuant to paragraph 7 of this Agreement.

z. "Operating Agreement" means the usual and customary written agreement between the DHS and a Blind Vendor pursuant to Haw. Admin. R. § 17-402-17(o) which contains terms and provisions applicable to all other Blind Vendors in the State of Hawaii, but which relates to the operation of the specific facilities at HIA.

aa. "Permit" means the license issued to the Blind Vendors by DHS to operate the Facilities at HIA pursuant to Haw. Rev. Stat. § 102-14.

bb. "Property Owned or Controlled by DOT" as relates to vending machines means any property owned or controlled by DOT under Haw. Rev. Stat. Chapter 261.

cc. "§ 110 Funds" means only those funds which have been reallocated by the U.S. Dept. of Education under the Federal Voc. Rehab. Act to DHS for federal FY 1991, 1992, 1993, and 1994, and shall not refer to those funds that are part of the original annual allocation of § 110 funds to DHS. All expenditures of § 110 funds hereunder are understood to be properly matched, in the

amount required by federal law, with funds from the Randolph-Sheppard revolving account, Haw. Rev. Stat. § 347-12.5, or other available state funds.

dd. "Threshold Compensation" means the amount of money which the HIA Blind Vendors may each receive as salary and or wages after expenses (including the Randolph-Sheppard payment) but before tax and before Incentive Compensation, beginning initially under this Agreement at an amount up to Eighty-Four Thousand Dollars (\$84,000) per year, and which will be adjusted semi-annually in accordance with the Cost-of-Living Index.

ee. "Vending Machines" means vending machines or other mechanical vending or dispensing devices, including, but not limited to those vending or dispensing such items as newspapers, magazines, cigarettes, candy, sandwiches, soft drinks, coffee, and the like, but specifically excluding vending machines or other mechanical devices vending or dispensing insurance policies, cash, money orders, checks, United States postage stamps, photocopy machines, baggage carts, telephones, and the like.

ff. "Vending Machine(s) Which DHS Is to Operate" means all of the vending machines at all locations and places at HIA (other than the vending machines in the passenger terminal building[s]) which DHS is to establish, arrange to maintain and service, and supervise and manage pursuant to paragraph 12.b. of this Agreement.

gg. "Vending Machine(s) Which the Blind Vendors Are to Operate" means all of the vending machines in HIA passenger terminal building(s) which the Blind Vendors have the responsibili-

ty to establish, arrange to maintain and service, and supervise and manage pursuant to paragraph 12.a. of this Agreement.

II. Recitals

1. The parties hereto acknowledge that the mediation process:

a. Was aimed at resolving the differences existing between them out of court in order to obtain a mutually acceptable institutionalized accommodation of competing interests and that the claims raised in the HBVA litigation were representative, but not exhaustive of the matters in controversy existing between the parties;

b. Involved during its course of more than two years the work of consultants and advisors for the mediators and the parties; involved meetings between such persons on a frequent basis; included numerous formal and informal ADR sessions; required the individual involvement of Blind Vendors; included the good faith commitment of representatives from DHS and DOT; and, was guided by the dedicated and persistent work of the mediators, Dee Dee Letts and David Fairbanks.

2. The parties acknowledge that this Agreement may not reflect all the agreements of the parties arising from the mediation process and that further contracts may be entered into to finalize those additional agreements.

III. Agreement

BASED ON THE FOREGOING, THE PARTIES AGREE AS FOLLOWS:

1. This Agreement shall be effective on the date of the

last signature. Its terms shall govern the relationship between all parties to this Agreement and their successors, agents, representatives, counsel, consultants or assigns, and can only be changed, modified or altered by subsequent written agreement by all parties.

2. DHS shall select, not later than ninety (90) days after the effective date of this Agreement, in accordance with its present selection process, as set forth in Haw. Admin. R. § 17-402-17(e)-(g), three (3) blind vendors to operate the facilities at HIA. Upon completion of the selection process:

a. DHS shall, not later than thirty (30) days after selection, and under the provisions of HRS §102-14, appoint and issue permits to the three blind vendors to operate the HIA facilities upon the individual blind vendors' agreements to operate such facilities in conformity with the law, this Agreement, and the Operating Agreement with DHS.

b. The DHS and the newly designated HIA Blind Vendors shall, not later than June 1, 1994, execute an Operating Agreement which shall entitle and require the HIA Blind Vendors to operate the HIA Facilities from and after June 1, 1994 or such earlier date as may be agreed by the parties herein. The Operating Agreement shall contain identical terms and conditions applicable to all other Blind Vendors in the State of Hawaii, as well as additional terms which may be required to ensure compliance by the HIA Blind Vendors with this Agreement.

c. The parties agree that in no event will the operation of the HIA Facilities by the selected and appointed Blind

Vendors, be delayed beyond June 1, 1994, and DHS agrees to make the HIA Facilities available to the Blind Vendors on June 1, 1994 or such earlier date as may be agreed to by the parties herein.

d. The parties agree that there may be a transition period after the new Inter-Island Terminal (IIT) at the HIA is open and the date of turn-over of the current HIA facilities to blind vendors in accordance with the procedures set forth herein. During the transition period, the new IIT facilities will be established and operated by the Committee. During such transition, all gross receipts after payment of debt service, operating expenses, and taxes will be paid to the Randolph-Sheppard fund as provided for in paragraph III.6. herein. All provisions contained within Sections 4b, 8-9, and 13-15 of this Agreement shall apply to the IIT facilities during the transition period.

3. From and after June 1, 1994 or such earlier date as may be agreed by the parties herein, DHS and DOT shall not, directly or indirectly, displace, dislocate, prohibit, or deny to any HIA Blind Vendor the authority to operate the facility and vending machines at HIA so long as he or she complies with the Operating Agreement and this Agreement.

4. The HIA Blind Vendors, as a condition of the permits issued by DHS to operate the facilities at HIA, agree that:

a. The HIA Blind Vendors will form a for-profit corporation ("the Corporation") and assign to such Corporation all their rights to operate the facilities at Honolulu International Airport. Each of the HIA Blind Vendors will become an equal shareholder in the Corporation.

b. The Corporation will designate one individual to act as a single point of contact for DOT in all matters pertaining to the operation of the Facilities and Vending Machines at HIA. In this regard, it is expressly agreed that the Corporation or the HIA Blind Vendors (and the Committee during any interim period it operates the new IIT Facility) may employ the services of one or more management or consultant firms to assist in the operation and administration of the HIA Facilities and in the training of employees. The single point of contact may be an employee of such management or consulting firm.

c. The HIA Blind Vendors may operate the Corporation in any manner permitted by law, subject only to the requirement: that the HIA Blind Vendors shall cause the Corporation to make annual payments as described in paragraph III.4.c.(2) below to the Randolph-Sheppard Account and annual payments to the Non-Profit Corporation out of its "operating surplus", as follows:

(1) The Corporation's "operating surplus" for each calendar year shall be determined by its regularly-retained independent certified public accountant, and shall be equal to its gross receipts from business operations, reduced by all business expenses incurred by the Corporation and deductible by the Corporation under the Internal Revenue Code (including but not limited to costs of sales, rent, employee benefits, salaries and/or wages) and all other cash payments which, though not currently deductible, are depreciable or otherwise represent legitimate Corporation expenditures which are not ultra vires under Hawaii law; provided, however, that salaries and/or wages paid to any HIA Blind Vendor in excess

of Threshold Compensation shall not reduce gross receipts for the purpose of this calculation.

(2) Within sixty (60) days after the end of each calendar year during which the Corporation holds the HIA permits, the Corporation shall pay an amount equal to forty percent (40%) of the Corporation's "operating surplus" for the year to the Randolph-Sheppard account and an amount equal to twenty percent (20%) of the Corporation's "operating surplus" for the year to the non-profit corporation. The parties specifically acknowledge that the annual payment to the Randolph-Sheppard account required in this paragraph is in addition to any allocation of rent to the Randolph-Sheppard account pursuant to 13(b) of this Agreement.

(3) The Corporation may in its discretion use the remaining forty percent (40%) of its "operating surplus" in any calendar year to pay additional compensation ("Incentive Compensation") to the HIA Blind Vendors or for any other purpose permitted by law.

5. DHS may add an additional Blind Vendor to the three (3) Blind Vendors selected pursuant to paragraph III.2. herein to operate facilities at HIA whenever the total compensation (defined as Threshold Compensation plus Incentive Compensation) of each Blind Vendor exceeds 136.9% of Threshold Compensation for two consecutive years. Such additionally added vendor or vendors shall enter the Corporation as equal shareholders, having all the rights and privileges enjoyed by the then-current shareholders. For purposes of this Agreement, the parties specifically agree that DHS

shall follow its legally binding vendor selection procedures, and nothing in this Agreement is intended by the parties to change, alter or modify DHS's duties, responsibilities, and obligations as determined under its vendor selection regulations as currently set forth in Haw. Admin. R. § 17-402-17(e)-(g) and in developing suitable vending facility locations as set forth in Haw. Admin. R. § 17-402-17 (k)-(l). If, after DHS has determined that a Blind Vendor should be added to the HIA Blind Vendor facility, any disagreements between DHS and the HIA Blind Vendors regarding such determination, including the identity of the Blind Vendor(s) selected, and/or the process used for that selection, shall be resolved as set forth in paragraph 25 herein.

The parties further agree that the income amounts set forth in this paragraph as a prerequisite to the addition of an HIA Blind Vendor are minimum thresholds only, and do not mandate that an additional Blind Vendor shall be added in the event that such amounts are reached. The parties also expressly agree that the insertion-of-additional-vendor rights granted to DHS by this Agreement, if exercised, may result in a loss of Incentive Compensation to then-existing HIA Blind Vendors and that this circumstance alone shall not be considered a grievable issue. The parties further agree that all HIA Blind Vendors shall be allowed to work back to the total compensation level set forth above for two consecutive years before any new Blind Vendor may be added.

6. The parties hereto understand and agree that, as a specific condition of their HRS §102-14 permits, the HIA Blind Vendors will be required to cause their Corporation to make certain

annual payments to the Randolph-Sheppard account as provided herein. Notwithstanding the foregoing, the parties also agree that during any period in which the Committee operates the Inter-Island Terminal ("IIT"), all gross receipts after payment of debt service, operating expenses, and taxes as set forth in paragraph III.2.(c) of this Agreement shall be paid to the Randolph-Sheppard account, and furthermore, the parties agree that any and all payments made to the Randolph-Sheppard account by virtue of the operation of the IIT by the Committee will be a direct dollar-for-dollar credit to the benefit of the HIA Blind Vendor Corporation against its required payments from operating surplus to the Randolph-Sheppard account.

7. The Blind Vendors shall form a Non-Profit Corporation ("NPC") exempt from taxation under the Internal Revenue Code §501(c)(3). The purpose of the NPC shall be to aid blind persons consistent with such non-profit status. The NPC shall receive funds distributed under paragraph III.4.c. herein. The parties further agree that the HIA Blind Vendors may appoint the board of directors of the NPC, which shall have exclusive control and authority over its operations and affairs; that a majority of the board of directors shall not consist of the HIA Blind Vendors or members of the HIA Blind Vendors' immediate families; and that DHS and DOT, or any instrumentality, employee or representative of them shall not have any right under this Agreement or otherwise to exercise any control or authority over any of the affairs of the NPC.

Notwithstanding the foregoing, the parties agree that no funds

paid by the Corporation to the NPC, nor any other assets of the NPC shall be used for the direct benefit of the HIA Blind Vendors except as they may derive general benefit from the charitable works of the NPC as members of the blind community or other benefitted class.

8. From and after the date the HIA Blind Vendors execute the Operating Agreement:

a. DHS and DOT shall not permit any person or entity, other than the HIA Blind Vendors to sell Health Aids at HIA, and the HIA Blind Vendors agree to offer to sell them at reasonable prices;

b. DHS and DOT shall not grant to any person or entity, other than the HIA Blind Vendors and the current restaurant, lounge, in-flight service(s), airline VIP lounges such as the Red Carpet Club and Ambassador Club, and package food gift concessionaires, and any successor to it or them, to sell food or beverages at HIA;

c. DHS and DOT shall not permit any person or entity, other than the HIA Blind Vendors and the current restaurant, lounge, in-flight service(s), airline VIP lounges such as the Red Carpet Club and Ambassador Club, and any successor to it or them, to sell tobacco products at the HIA, if such concessionaires are authorized by law to sell such products;

d. DHS and DOT shall not grant to any person or entity, other than the HIA Blind Vendors the current restaurant, lounge, in-flight service(s), airline VIP lounges such as the Red Carpet Club and Ambassador Club, and any successor to it or them,

in any contract negotiation or renegotiation the right to sell "packaged food" as defined in paragraphs 8.f.(2) and (3) hereof, or "beverages" as defined in paragraph 8.f.(4) hereof;

e. The HIA Blind Vendors shall have the exclusive right to display, offer for sale, and sell at the Facility, and no other concessionaire, person, or entity other than the HIA Blind Vendors shall be allowed to sell, the following items:

(1) Newspapers. The Honolulu Advertiser and the Honolulu Star-Bulletin shall be carried and sold for no more than their cover price, and other newspapers, including but not limited to the Wall Street Journal, and USA Today, shall be carried and sold at prices not more than cost plus forty (40%) percent;

(2) Periodicals and Magazines. A variety of not less than 20 different periodicals and magazines, including major national best-sellers, shall be carried and sold for no more than their cover price;

(3) Paperback Books. A variety of not less than 20 different titles of paperback books, including such best-sellers as appear on the weekly New York Times Book Review section "Best Sellers" list, both fiction and nonfiction, as well as publications that feature or promote Hawaii, shall be carried and sold for no more than their cover prices;

(4) Health Aids. Health Aids shall be carried and sold at reasonable prices; and

(5) Notwithstanding the foregoing, no chewing gum or gum products shall be sold or made available by the HIA Blind Vendors, provided no other concessionaire, person, or entity

is allowed to sell or make chewing gum or gum products available at HIA.

f. The HIA Blind Vendors may display, offer for sale, and sell at the Facility the following items, subject to competition from the current restaurant, lounge, in-flight service(s), airline VIP lounges such as the Red Carpet Club and Ambassador Club, and any successor to it or them:

(1) Tobacco Products. A full line of single packaged tobacco products including cigarette packs and a variety of other single packaged tobacco products, such as packaged cigars, matches, and disposable lighters shall be carried and sold at reasonable prices. Only restaurants and lounges (if otherwise allowed by law), shall be allowed to sell tobacco products in competition with the HIA Blind Vendors.

(2) Packaged Food. A variety of packaged items such as the following:

(a) Popular candy, nut and snack items, each item to have a weight of not greater than six ounces (with the exception of 5 ounce cans of macadamian nuts which shall not be sold by the Blind Vendor); and

(b) Various food items such as the following: sandwiches, pastry items, sushi, musubi, and fruit.

(4) Each of the packaged food items sold under this Agreement shall meet each of the following requirements:

(a) Each packaged food item shall be individually prepackaged;

(b) Each packaged food item shall be

ready for immediate consumption;

(c) Each packaged food item shall be sold at a reasonable price; and

(d) Each packaged food item shall be prepared off premises by someone other than the HIA Blind Vendors or the HIA Blind Vendors's employees.

(5) Beverages. A variety of popular, non-alcoholic beverages may be sold at reasonable prices; provided, however, that each beverage item shall be individually packaged, and provided further that carbonated beverages and sodas shall be not larger than twelve fluid ounces, and that juices and other non-carbonated beverages that are not available for purchase in packages less than sixteen fluid ounces may be sold in packages no larger than sixteen fluid ounces.

g. No tables, counters, booths, furniture or other amenities shall be provided for the consumption of products sold at the Facility, and food service shall not be provided.

h. No equipment for the heating or warming of food or beverages shall be utilized or provided, including self-service equipment.

i. Miscellaneous small items. A variety of small items consisting only of the following types of merchandise may be carried, on a non-exclusive basis, and sold at reasonable prices: maps, drive-guides, calendars, postcards, totes, film, batteries, luggage carts, sun screen lotion, and non-souvenir pens and pencils.

9. Reasonable Price. A price shall be presumptively

reasonable if it does not exceed the price of an identical or similar item sold at any other retail business at the HIA.

10. The HIA Blind Vendors, DHS, and DOT agree that from time to time, the appearance of the HIA facilities may need to be upgraded through redesign and remodeling, including appropriate fixtures, furniture, and equipment, so that products are presented in an appealing, uncluttered and contemporary manner. The capital expenditures relating to such improvements shall, in all cases, be agreed to in advance by the HIA Blind Vendors and DHS. If § 110 funds are available, they may be used for such improvements subject to the law.

11. The parties agree that meetings may be convened as appropriate, upon call of the HIA Blind Vendors, the committee, DHS, DOT or the mediators to handle any future problems or concerns that may arise from this Agreement or the Blind Vendor operations at HIA.

12. From and after June 1, 1994 or such earlier date as may agreed by the parties herein, no vending machines shall be permitted at HIA other than those authorized by this Agreement.

a. The HIA Blind Vendors shall assume operation of all of the vending machines in all passenger terminal building(s) at HIA, and the HIA Blind Vendors shall establish, arrange to maintain and service, and supervise and manage all vending machines in all passenger terminal building(s), and all income derived from such vending machines shall be retained by the HIA Blind Vendors. Any vending machine located in any passenger terminal building(s) at HIA shall constitute a Vending Machine which the Blind Vendors

Are to Operate regardless of whether or not the vending machine is in a Building or in an Area Open or Closed to the Public. The parties further agree that notwithstanding the foregoing, restaurant and lounge operations may install and maintain vending machines within their own restaurant(s) and lounge(s) but not elsewhere.

b. Ho'opono, the Services to the Blind Branch of DHS, shall assume operation of all of the vending machines at all locations and places in HIA other than the vending machines in the passenger terminal building(s), and Ho'opono shall establish, arrange to maintain and service, and supervise and manage all such vending machines and all income derived from such vending machines shall be deposited in the Randolph-Sheppard Revolving Account, Haw. Rev. Stat. § 347-12.5. A vending machine located at any place or in any building at HIA (other than a vending machine in any HIA passenger terminal building) shall constitute a vending machine which DHS is to operate when:

(1) A vending machine is located or permitted in a Building or Area Owned or Controlled by DOT by any Authority other than in a written lease; or

(2) A vending machine is located or permitted in a Building or Area Owned or Controlled by DOT by Authority of a New, Renewed or Replaced Lease. The parties agree that any vending machine that meets the foregoing criteria shall be a Vending Machine Which DHS Is to Operate if the vending machine is on Property Owned or Controlled by DOT regardless of whether or not the vending machine is in a Building or Area Open or Closed to the

Public.

c. Prior to June 1, 1994, the parties agree to prepare two schematic drawings and schedules: one for the HIA Blind Vendors ("Blind Vendor Schematic") and the other for Ho'opono ("Ho'opono Schematic").

(1) The Blind Vendor Schematic is intended to be an accurate representation of the retail, storage, and vending machine space to be occupied and managed by the HIA Blind Vendors.

(2) The Ho'opono Schematic is intended to be an accurate representation of the vending machines and other space to be occupied and managed by Ho'opono.

(3) The Blind Vendor Schematic shall be composed of three parts: summary, maps, and list of vending machines. The summary will provide a statement of total square footage and base monthly rent for retail commercial space, vending machine space, and storage and office space. The maps section of the schematic will contain an accurate Drawing of the vending facility and will clearly delineate: first, a Drawing of the commercial retail space; and, second, a Drawing of the storage space. The schematic shall also contain a List of Vending Machines which the HIA Blind Vendors are to operate and manage.

(4) The Ho'opono Schematic shall be composed of three parts: summary, maps, and List of Vending Machines. The summary will provide a statement of total square footage of all vending machine space and other space. The maps section of the schematic will contain an accurate Drawing of the other space. The schematic shall also contain a List of Vending Machines which

Ho'opono is to operate and manage.

d. The primary responsibility for the preparation of the schematics is with DHS with assistance from the Committee, the HIA Blind Vendors and DOT. The accuracy and completeness of the schematic are subject to site inspection, document examination and physical audit by all parties. DHS, in coordination with the Committee, will retain an individual who will be responsible for the coordination of all such activities including preparation of the schematics, production of the List of Vending Machines, conducting site inspection and physical audit of all Vending Machines, including those which may or may not presently be Vending Machines Which DHS Is to Operate or Vending Machines Which the Blind Vendors Are to Operate.

e. Any rent obligation relating to vending machine space or utility charges begins at the time the HIA Blind Vendors begin to receive income from the vending machines but not earlier than June 1, 1994. "Gross Annual Vending Machine Income" as defined in this Agreement will begin on June 1, 1994 or such earlier date as agreed by the parties herein.

f. DOT and DHS agree to meet with the Committee and the HIA Blind Vendors to review and update the vending machine section of the schematics upon the call of the Committee or the HIA Blind Vendors.

g. Subject to the final approval of DHS, which shall not be unreasonably withheld, the parties hereto agree to locate and establish as many vending machines as possible at all locations at HIA including the passenger terminal building(s)

consistent with DOT's judgment, appropriate to meet the needs of the traveling public, the requirements of others at the airport, and aesthetics. Such judgment shall be made only after consultation with DOT, the Committee and the HIA Blind Vendors. All parties hereto agree to identify new locations wherever possible and to expand the number and type of vending machines. DHS, DOT, the Committee, and the HIA Blind Vendors shall jointly conduct detailed periodic reviews on at least a yearly basis and prepare and circulate a written report relating thereto. The Committee shall review these written reports at regularly scheduled meetings.

13. The HIA Blind Vendors shall pay to DOT, as collection agent for DHS, within ten (10) days after the end of each month, an amount equal to the greater of the sum calculated under paragraph 13a or 13b:

a. One Dollar and Twenty Five Cents (\$1.25) per square foot per month for all space allocated to commercial retail sales, including vending machine use, and also including that space allocated to vending machine use and restocking at the rate of Forty Cents (\$0.40) per square foot per month for all other storage space, as will be designated on the schematics prepared by the parties ("base charge"); or

b. A percentage of each of the HIA Blind Vendors's Gross Annual Income from the Facility to the Blind Vendors hereunder as reflected in the following schedule ("percentage charge"):

- (1) Seven (7%) percent of the first \$600,000;
- (2) Eight and one-half (8½%) of all amounts in excess of \$600,000 up to \$3,000,000;

and

- (3) Nine and one-half (9½%) of all amounts in excess of \$3,000,000 in gross receipts.

Notwithstanding the foregoing, the parties acknowledge that the current practice of DHS and DOT of allocating to the Randolph-Sheppard account an amount equal to one percent (1%) of the Gross Annual Income from the Facility of the rent paid by the HIA Blind Vendors shall continue.

c. Both the base charge and the percentage charge to be paid by the HIA Blind Vendors to DOT as agent for DHS shall be renegotiated every ten (10) years. It is the intent of all parties to prohibit the use of this renegotiation clause to make rent increases prohibitive for the HIA Blind Vendors's future operations; however, subject to the foregoing, the usual business principles for rent renegotiation shall apply and where possible, it is the intent of the parties to maintain the rent structure with elements of base rent and percentage rent such as set forth in paragraphs 13a and 13b herein.

14. The HIA Blind Vendors shall pay utility charges for the electricity consumed by the Facility provided that such usage is separately metered. Or they shall pay a reasonable estimated utility charges for vending machines as established and agreed upon by the HIA Blind Vendors and DOT.

15. All parties agree that:

a. The Facility shall be used, maintained and operated in compliance with all requirements imposed pursuant to 49 CFR, Department of Transportation, Subtitle A, Office of the

Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and all other applicable anti-discrimination laws;

b. All contributions to the Randolph-Sheppard Account shall be expended in accordance with 20 USC § 107b-1 and Haw. Adm. Rules § 17-402-17;

c. Subject to the provisions of the following paragraph, in hiring employees for the Facility, the HIA Blind Vendors shall give preference to qualified blind candidates for employment, and the HIA Blind Vendors shall use reasonable efforts in coordination with DHS and other appropriate persons or entities in recruiting such candidates for employment. If no qualified blind candidates for employment can be found, the HIA Blind Vendors agree to give preference to visually impaired persons, and the HIA Blind Vendors shall use reasonable efforts in coordination with DHS in recruiting such candidate for employment. If no qualified blind or visually impaired candidate for employment can be found, the HIA Blind Vendors agree to give preference to qualified disabled persons, and the HIA Blind Vendors shall use reasonable efforts in coordination with DHS in recruiting such candidates for employment. If no qualified blind, visually impaired, or disabled candidates for employment can be found, the HIA Blind Vendors may hire any candidate for employment with regard to this paragraph. As used in this paragraph, "blind" and "visually impaired" shall have the meaning ascribed to the terms "blind" and "visually handicapped" by HRS §§ 235-1 and 347-1, respectively. As used in this paragraph,

the terms "disabled" or "disability" shall have the same meaning ascribed to them" in HRS § 489-2;

d. In hiring employees for the Facility, the HIA Blind Vendors shall retain all non-executive employees of the Existing Operator of the HIA Facility ("existing HIA employees") in the same or similar jobs and at the same or similar pay so long as the performance of each such employee is deemed satisfactory in the sole discretion of the HIA Blind Vendors and provided that:

(1) The employment benefits for the existing HIA employees and the employees of the HIA Blind Vendors shall be equal;

(2) While there may be a transition period to reach total equality, the goal is to achieve parity and equality among all employees so as not to penalize or benefit either group;

(3) Notwithstanding the foregoing, it is a condition precedent to retaining existing HIA employees that any employee benefit that existing HIA employees have accrued because of employment with the Existing Operator of the HIA Facility (that is over and above the benefits offered to entry-level employees of the HIA Blind Vendor corporation) must be fully funded by the Existing Operator of the HIA Facility prior to continued employment by the HIA Blind Vendor corporation. HIA Blind Vendors shall have the right to terminate any HIA employee including any existing HIA employees for unsatisfactory performance or for reasons for which the permit of a Blind Vendor may be revoked. However, it is the intent of the parties that the HIA Blind Vendors shall make a reasonable attempt to train and accommodate all employees consis-

tent with the business needs of the corporation.

16. DHS and the other parties shall cooperate and vigorously pursue § 110 funds to upgrade existing Facilities and establish new ones; to upgrade the Facilities at HIA; and, to implement and monitor compliance with the terms and provisions of this Agreement, unless otherwise agreed by all parties.

17. All parties agree that there may be substantial time and effort expended and cost incurred relating to the mediation, implementation, monitoring of, and compliance with this Agreement. In this regard,

a. The parties will continue the appointment of Dee Dee Letts and David L. Fairbanks as mediators to assist with the resolution of problems related to this Agreement.

b. Subject to the foregoing, upon the execution of this Agreement the parties shall have at their disposal to ensure implementation of this Agreement, the existing sum of approximately \$241,556, less the amount of fees and costs paid to date to the professional consultants and advisors for the Blind Vendors, the Committee, the Association, and the individual Blind Vendors parties to this Agreement and for attorneys' fees and costs, and other § 110 funds, if available. These funds shall be held by the Master as provided for in the Neighbor Island Agreement dated April 4, 1993 filed in the NIA Litigation and as approved by the Court, and as otherwise Ordered by the Court. These funds shall be used exclusively for the purposes of this Agreement and used by the parties for the purposes described in this Agreement and in the applicable Court Orders. Such purposes shall include but are not

limited to the payment of reasonable costs and fees for implementation, monitoring of and compliance with this Agreement to the professional consultants and advisors for the Blind Vendors, the Committee, the Association, and the individual Blind Vendor parties to this Agreement and for attorneys' fees and costs. Any disagreement as to the amount to be paid shall be subject to resolution in accordance with the provisions of paragraph 23 of this Agreement.

c. The parties agree to continue the appointment of the office of DHS Vocational Rehabilitation Administrator, currently in the person of Neil Shim, as court-appointed Master pursuant to Haw.R.Civ.P. 53(c) in the NIA Litigation to serve without bond and without compensation, and to act as a Master in regard to this HBVA Litigation. Subject to the continued approval of the Court, the Master shall hold in an interest-bearing account separate from the State accounting system the § 110 funds which are to be expended exclusively for the purposes set forth above. The Master's sole function shall be to make payments from said account, without regard to Haw. Rev. Stat. Chapter 103 or other laws defining or constraining how public funds shall be spent, to pay for those services or other items as set forth herein.

d. In consideration of receipt of the payment of the amounts set forth above and specifically those payments to be made under subparagraph b. herein, all claims for attorneys and advisors' fees, or professional consultants' or advisors' fees or attorneys' fees incurred prior to the effective date of this Agreement against DHS, DOT, and the State of Hawaii and its officers and employees in connection with the mediation process,

all civil actions, the NIA Litigation and the HBVA Litigation, including the original HBVA civil action in the trial court and on appeal, and agency proceedings on remand, are forever waived and released. The Committee, the Association, the Blind Vendors, and their counsel hereby warrant that they have authority to waive and release such fee claims for the parties in the HBVA Litigation. The foregoing waiver and release shall remain in place even if the State materially breaches this Agreement, except for breach of this paragraph.

18. In consideration of the terms of this Agreement being fully effectuated and implemented, the Association and the Individual Blind Vendors agree, except as expressly set forth herein:

a. To withdraw with prejudice the Amended Notice of Claim and Request for Informal Administrative Proceeding, Evidentiary Hearing and Arbitration filed with the Department of Human Services, State of Hawaii on August 8, 1990 ("Notice of Claim") as to all parties to this Agreement, and to withdraw the Notice of Claim without prejudice as to nonparties to this Agreement; and,

b. To dismiss with prejudice the HBVA Litigation as to all parties to this Agreement, and to dismiss the Amended Complaint without prejudice as to nonparties to this Agreement;

c. Provided, however, that in the event that this Agreement is found or determined to be invalid or unenforceable, in whole or in part, the claims of the parties to this Agreement as set forth in the Notice of Claim and in the Amended Complaint in

the HBVA Litigation shall be reinstated to the extent necessary to permit the assertion of such claims.

19. The parties agree that meetings may be convened as appropriate, upon call of the Committee, DHS, DOT, or the mediators to enlarge, extend, assess, and report on the placement of new vending machines and new facilities within government buildings, whether existing, planned, or under construction, for the purpose of ensuring compliance with the law and this Agreement. HIA Blind Vendors shall be parties for purposes of this paragraph for matters concerning HIA only.

20. This Agreement may be subject to the approval of the Federal Aviation Administration, pursuant to section 5, ¶ 42(a)(3) of U.S. Department of Transportation Advisory Circular 150/5100-15A.

21. This Agreement is a negotiated compromise and settlement agreement resulting from alternative dispute resolution mediation process and nothing in this Agreement constitutes an admission of any party, including an admission as to the application or interpretation of any law.

22. The Blind Vendors, the Association, the Committee, DHS, and DOT agree that cooperation is in their mutual best interest and agree to attempt alternative dispute resolution prior to administrative or judicial action.

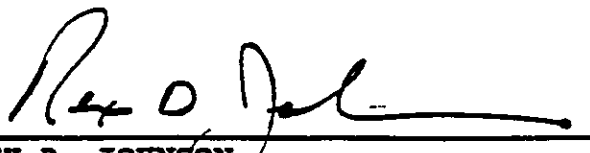
23. If there is a disagreement or dispute regarding any matter related to, connected with, or set forth in this contract, then the parties agree to employ the mediation services of the Center for Alternative Dispute Resolution of the Hawaii State

Judiciary ("Center for ADR") in the first instance. The Mediation Process is initiated by any party to this Agreement requesting to mediate. The date said written demand for mediation is received by the Center for ADR is the first day for purposes of determining any time periods herein. This process shall be for mediation first and then if mediation does not resolve the dispute, there shall be an expedited arbitration. The parties shall employ the services of the Center for ADR to handle the arbitration, including the selection of arbitrator(s) and the scheduling of any actual hearing. Notwithstanding the foregoing, the parties agree that any arbitration decision shall be made in writing and issued no later than forty-five (45) days after the date the parties request mediation through the Center for ADR. In all other respects and to the extent not inconsistent with the procedures for arbitration used by the Center for ADR, the provisions of Haw. Rev. Stat. Chapter 658 shall govern said arbitration.

24. This Agreement may be signed in its original form or by use of counterparts as well as through use of original signatures of the parties transmitted by telecopier and when so signed by all parties, it shall be fully effective.

25. This Agreement may be signed in counterparts.


AGREED AND SO STIPULATED:



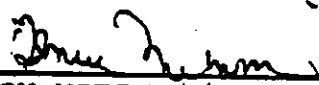
REX D. JOHNSON
Director of Transportation
State of Hawaii


WINONA E. RUBIN
Director of Human Services
State of Hawaii

HAWAII STATE COMMITTEE OF
BLIND VENDORS



WARREN TOYAMA
Its: Chairman

HAWAII BLIND VENDORS ASSOCIATION


TOM MORIKAWA
Its: President


WALTER ISHIKAWA


CHARLOTTE KAUBANE


ESROM NIHOA

Yoshiro Nishihara
YOSHIRO NISHIHARA

Miriam Onomura
MIRIAM ONOMURA

Clyde Ota

CLYDE OTA

Alice Schaar
ALICE SCHAAR

Warren Toyama
WARREN TOYAMA

Filo Tu

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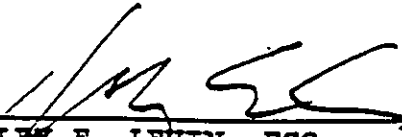
Jeanette Tu
JEANETTE TU

APPROVED AS TO FORM AND CONTENT:



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DHS and WINONA E. RUBIN